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Supreme Court, U.S.
FILED
FEB 14 2007
OFFICE OF THE CLERK

No. 06-8273

In the
SUPREME COURT OF THE UNITED STATES

Stephen Danforth, *Petitioner,*

v.

State of Minnesota, *Respondent.*

On Petition for a Writ of Certiorari to the
Supreme Court of the State of Minnesota

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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REPLY BRIEF IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

Reviewing only respondent State of Minnesota's Brief in Opposition to the Petition for a Writ of Certiorari (BIO) in this case, one might think that the petition presents only one issue: whether petitioner Stephen Danforth is entitled to benefit from this Court's decision in *Crawford v. Washington*, 541 U.S. 36 (2004), under the retroactivity standard first announced in *Teague v. Lane*, 489 U.S. 288 (1989). The brief in opposition discusses only this issue. (BIO at 9-24). This case, however, presents two issues, and the first – the issue respondent utterly ignores – is perhaps the most important.

The primary issue presented in this case is whether state courts are required, under the Supremacy Clause of the United States Constitution[1] or under United States Supreme Court caselaw, to use the *Teague* retroactivity standard when deciding whether to apply a United States Supreme Court decision retroactively. (See Pet. for Cert. at 6-15). The Minnesota Supreme Court's conclusion that it could not apply a broader retroactivity rule than that used in *Teague* deepened an already deep split of authority amongst the state courts on this issue, which is one of tremendous importance to every state court in the country. Only this Court can resolve this split and this case presents an ideal vehicle for doing so.

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[1] U.S. Const., art. IV, sec. 2 (providing that "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.").

In sum, petitioner urges the Court not to let this petition become lost amongst the plethora of *Whorton v. Bockting*[2]-related petitions that the Court has no doubt received. If the Court decides *Bockting* in favor of the habeas petitioner (respondent before this Court), then the Court could grant, vacate, and remand this case to the Minnesota Supreme Court for further proceedings. If, on the other hand, the Court decides *Bockting* in favor of the Government, then the Court should consider whether to grant certiorari on the first question presented in this case.

The first question presented in this petition is one of vital important to state courts, state-court practitioners, state-court judges, state-court prosecutors, and state-court defendants. This Court should grant certiorari of this case to answer it.

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[2] *Wharton v. Bockting*, ___ U.S. ___, 126 S.Ct. 2017 (2006) (File No. 05-595) (presenting the issue of whether *Crawford* applies to a federal habeas corpus petitioner

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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